

“As I am not aware of any authoritative precedent, I will approach this as a novel duty case”

## 1. Duty of Care - intensely legal question

### Frame it:

3P: Did the Probation Service owe a DOC to Ms Couch to take care in the supervision of parolees?

Did the plumber owe a duty to the neighbours to take care while performing plumbing work?

### DUTY:

**governing precedent** - manufacturer of goods + ultimate consumer.

Argue: material differences?

P - neighbourhood - Donoghue - yes RF - opportunity for intermediate examination - hidden defect

D - no RF, constrict precedent, RP would've taken steps to prevent harm, doesn't fit in normal liability

Precedent: **Marlborough DC** for **Henry**: proximate relationship - contractual-ish (payment), rely on LIM for info about property (+ council knows this), professional adviser (skill).

**Modern approach: novel-duty cases:** Although the precise formula is not important, it is accepted that a duty arises out of an inquiry into RF + proximity. (**North Shore City Council v AG**, confirms the **Anns** two-stage test).

- Opportunity for intermediate inspection (**Donoghue, Woodhouse J in Scott Group**) + external / internal ?

1. **RF of harm to P** “screening mechanism” **North Shore City Council** Fair requirement bc so unlikely otherwise.

- **Would a RP in the pos of the D have foreseen that if they acted carelessly, a person in the pos of the P would be harmed?** (**Donoghue**) Eg. RF that a careless plumber would result in damage to neighbours.

### SPELL OUT LOTSA ARGUMENTS:

**properties of oil/water/risky substance**, how it causes damage, why it would affect specifically Ps, placement specific to damage?

- If someone in the position of potential harm didn't raise any complaints with D's practices (**easy call - sign w/ number**), suggests NOT RF - how can we expect D to know? Subj evidence speaks to the obje test. (**MacKay, Smith**).

- D's knowledge of event happening before repeatedly (more than HL) - changes duty question **Matheson kids acting out**

2. **+ proximity**: concerned with everything bearing upon the relationship between the parties. (**Strathboss Kiwifruit Ltd**)

- Extra consideration as RF is too easy to prove.

Allows balancing of the moral claims of parties (eg. D's claim to be free of undue burden of legal responsibility vs. P's claim for compensation for avoidable harm) - [159] in **North Shore City Council v AG**

- **Contractual matrix?** Shapes relationship. (**Turton**)

- **D gov actor?** proximity is hard to determine (often inspector/local authority).

- **Statute?** relevant here (esp re public law obligations) **Elias + Anderson CJJ, Couch No (1)**

Go to 3P/NM:

### Can be relevant to duty:

- **Breach** - **Smith, L Mackay**: if what the D must do to avoid breach is unreasonable (**24 hour surveillance**)- likely no duty. **Although surveillance may still be R!** **duty to warn larger than duty to control bc of what D would have to do to NOT breach** (**Couch, Tipping MAJ**). Same if hard to articulate what must be done to not breach.

- **Causation in law**: scope of duty (advise/inform) points to reasonable reliance in NM cases (**Henry**)

- **Causation in fact**: problems establishing causation in law may lead to problems with establishing a duty.

- **Remoteness** - CJ **Elias** in **Couch No 1**: one of the “broad labels” she describes - maybe if duty established, huge pot for liability - no damage too remote?

# POLICY

**A prima facie duty of care can be negated by wider policy implications (South Pacific), requiring a consideration of whether it would be fair, just and reasonable to impose a duty of care (North Shore City Council).**

- 3. Wider implications for NZ society weighing AGAINST there being a duty of care. External factors (not related to individuals): effect on non-parties + structure of law/society generally. How will others respond to this new duty? "balancing exercise" - Cooke P.
- **floodgates argument** (large group who can/will claim)
  - Indeterminate liability (unclear who will be successful in claims). D constantly in court.
- **Shouldn't chill socially useful behaviour teaching/rehabilitation/health and safety** (or alternatively pass everyone)
  - **REBUT:** (D class) is made of "sterner stuff" to quote Lord Reid, Dorset Yacht (optimistic)
  - **REBUT:** we want to trust this information + hold public figures to account. If D gives wrong info - very bad!!!
- DISCRETION: (Dorset Yacht):** Where stat regime + gov policy point towards discretion. tort shouldn't cut across public power/limit officials' discretion except in instances where SO CLEAR negligence (eg. Dorset). If D found negligent, D's class of jobs will get scared + not use discretion.

**Practicalities:** how would this work in practice eg asking HC judges to micromanage law programs

- **Public actor: Michael** - liability not a good mechanism to change behaviour + public ultimately bear the cost.

**(SOP/democratic mandate):**

Courts can't tell public actors how to **allocate their resources** - policy decision + imposing duty forces hand

- **Ann's:** the more operational (less policy-like) the claim, the better and easier to do.
- **Couch:** court uses the legal framework to show duty: Statute can be used either way!

**- Housing cases**

- The court shouldn't mandate the allocation of public funding (as in Matheson-style cases) - if breach could only be prevented is for the D (school) to build \$50K wall, maybe no duty.

**Loss shifting:** Finding duty "depends ultimately upon the courts' assessment of the demands of society for protection from the carelessness of others" Loss shifting ought to be for "good reasons" Hedley (Lord Pearce)

Don't want tax-payers to bear the loss that (landlords/P) usually pays.

**NM Policy wise:**

Free-rider problem: Shareholders pay for audit bc stat obligation + public rely despite not paying.

To fix: **co buying all/majority of shares has duty, not the average investor (Scott) Lord Oliver disagrees in Caparo.**

P is particularly vulnerable / no opportunity for intermediate inspection (Donoghue)

**- Integrity of legal system**

**CONTRACT+TORT:** P has claims in both (may differ in terms of scope of damages/remedies etc.)

Distinction arbitrary + often turns on paid/unpaid (eg. Hedley).

Primacy of contract: P agrees to duty, tort imposes duty (min Thomas J: tort shows societal commitments)

P chooses which (unless contracted out of tort) (Henderson, UK, Frost NZ)

- Should there exist tort duty when no contract? (Yes) L Buckmaster (Donoghue).
- **Contractual matrix (ability to distribute risks relative to payment) may negative tortious duty**, as P likely accepted the higher duty in order to get a financial pay off (Turton).
- **Although Turton relies on simply the "potential" to contract out**, which could be used to prevent many claims (Counter-rebuttal: this could've happened in HB, and it didn't).

**DEFAM+TORT:** Can we hold D liable in tort when this would expose her to greater liability than she would have in defamation? South Pacific Mfg tort shouldn't cut across defamation (balance of competing interests).

**TORT+COPYRIGHT:** (Cassette case: CBS Songs Ltd): **owners of copyright sued cassette for neg selling product that allowed copying.** No liability in negligence - can't supplement the Copyright Act.

**TORT+JR:** Takaro Properties: **P sues in compensation after waiting for JR** - NO DOC bc would cut across

### 3P CASES:

Who's who? Is this **Dorset/Haynes** situation?

- **Dorset Yacht**: must've been 3P's action - nothing else would've caused damage: so 3P case - focus actual damage.
- (**Haynes**) Drain/Celia: many different 3P actions could've resulted in damage - D created source danger - focus on D's creation of danger, not actual damage.

### 3Party Cases:

"Does (the D/a **school**) owe a duty of care to (the P/**neighbouring premises**) to prevent (3P/**the school children**) from causing damage?" Is it RF/VL that (3P) will cause damage to P if the D doesn't control them?

For a duty to be owed by D to take RC so 3P doesn't cause damage to P:

1. It must be (more than RF) "very likely" that **3P will cause damage to P if D doesn't control them**, so likely as to not break chain of causation (**Diplock, Dorset**) "natural" "probable" "result of release"

BC human nature is so unpredictable (**Smith**): (needle of probability must be "near the top of the scale" - **Smith**).  
(argue LOTS here)

evidence of non-complaining relevant here (**Smith**) AND knowledge of previous conduct indicates more than HL  
**No claim** if previous knowledge of similar/same events + no preventative measures (**Perl, burglaries to property**).

Assumption of responsibility: **Stansbie - contractor left P's door unlocked - burgled (3P)**. NO SPECIAL relationship (D&3P) BUT liable bc direct AND D didn't do the very thing (locking) to prevent thieves. (not if bore hole)HL that keeping door unlocked = damage, so F it's near knowledge

**Funeral Prisoner burglaries**- liable if -not resp discretion (so unR) + commission "natural and probable" (**Dorset, Lord Reid**)

### 2. + there must be sufficiently proximity

- Control, legal supervision by government actors (**Dorset Yacht**).
- **Physical proximity** boys' limited options made yacht damage "highly probable" (**Diplock, Dorset**). Weirid restriction not compatible w/ L Atkin in **Donoghue**.
- Temporal proximity?
- (**Couch, Tipping/maj**). DOC owed if P part of "**Identifiable and sufficiently delineated class**", separate from general public putting them at "**special risk**". Broad, fact-specific inquiry - CJ Elias.

D + P: P must be in special group D needs to protect

3P + D: control/assumption of responsibility. D has power to reduce/eliminate risk.

P + 3P: **specific + obvious risk**: factors - high risk 3P reoffend, similar past episode (**random violence and property crime**), 3P needed \$ (\$ on premises), 3P knows security system (isn't her working there enough??)

- **Forces arbitrary distinctions - member of public shot?** (**Couch, CJ, min**). Broad inquiry (easier for Ps) - F + statute.
- **Inappropriate to distinguish one group of victims from another**: police NO duty - partly policy (private law over public law bad, want to improve police practice, public bear cost) (**Michael**) boyfriend kill

"Largely rejected by the UKSC in **Michael**. In the light of that, our SC may be persuaded to revisit its analysis."

### SMITH YARNS: L GOFF

(**Goff, Smith**): Don't want to burden property owners (D) by imposing general D to take RC (to prevent 3Ps from entering their property then next-door). We choose own level of precautions eg **old lady window open for cat, man weeding, (Family away, door unlocked - vandal wrecks, plumbing leak - no liable, even if neighbourhood vandalism)**

**BUT bad leaving abandoned building: wasn't considered?? This puts more burden on the P.**

**Goff** - only owe DOC for 3P when D creates source of danger (**Haynes**), or D has tempting danger on property (**fireworks**)

### NOT REALLY 3P:

**D creates (or permits to be caused) source of danger** + RF that 3P would interfere + spark danger causing damage. Many things could spark danger, liability **if** the "sort of thing which the D should "guard against". **Haynes - horse unguarded, boys stone.** (**L Goff, Smith**). Harm can happen without direct 3P intervention.

**Fireworks, unlocked shed, everyone knows**: "tempting + **inherently dangerous**" - interference - boys the very thing D should've guarded against. (**Goff, Smith**)

**Hazardous substances**: occupier aware of hazard - duty to prevent hazard causing damage to others (**Smith**) (film?)

### Pure omissions

L Goff **Smith**: CLASH: tort generally doesn't cover omissions bc autonomy, burden of RF BUT neighbourhood!

**REBUT: this is not pure omission. Landlords bought property + managed project negligently. Wrong decision.**

- Also **Dorset** by L Diplock? Tipping J in **Couch** - omission to warn? **G- No.**

**NEGLIGENT MISSTATEMENTS:** L Reid (**Hedley Donoghue**) “no direct bearing” + categories are not closed. History: duty only contractual, fiduciary (trustee, lawyer, power/vulnerability), or deceit (deliberate falsehood).

**Duty owed where it would be R for the P to rely on the statement (**Hedley Byrne**), or lack of statement**

**Higher standard than RF** (like 3P) - RR-relationship equivalent to contract BECAUSE: ripple effect (wide ramifications of statements due to broadcasting - info not used up, casual nature of some statements (**Hedley**), mere foreseeability would lead to an indeterminate class of Ps and would shift the normal burden of commercial life onto others (\$ loss)

**RR (+proximity):** (can go to both causation and duty) “As *Ellis J* raised in *Henry*, reasonable reliance is tantamount to an analysis of causation, and I will defer speaking to this point until I analyse causation.”

- 1. Actual reliance is a requirement** (causation) (**Boyd Knight** - why claim failed) (similar to causation in fact)  
Ps wouldn't have had the opportunity to buy shares but for neg report (bc fraud discovery would've killed co). REBUT: Ps didn't try and look at accounts, only saw the auditors report (not reasonable). P was financial planner - should've known better.  
**Henry** - no reliance as doubted read LIM, didn't speak w/ solicitors/request reports: didn't think would've acted differently
- 2. Detriment (**Caparo**)** If P still make a smaller profit, no loss. (**Scott, Cooke J**) P may have paid less for shares, but no evidence shareholders would've accepted. **Woodhouse dissent**. “but for” again.

**FACTORS** that show likelihood + reasonableness of reliance:

- Look at environmental **context** - where are you, in what capacity are you speaking, what words were said, how were they said
- Look at what it is actually certifying: is it saying that the checks are up to date? Or that the company is great/awesome.
- statute
- **Purpose of statement:** only R to rely on something for the purpose it was created even if RF it be used for other purposes (**Caparo**). Q - what was purpose provided for? How did P use it?
  - Statute evidence for this (**Boyd**: required reports to make people confident investing (good P), **Henry**: LAGOIMA + LIM)  
**Caparo** - purpose: holding management to account (silent statute).
    - P argues: **Henry** says if statute silent, OK if info used for many purposes **unfair**
    - purpose of LIMS: provide information about special features (erosion, slippage etc.)
    - **purpose of audits**: **Caparo**: for shareholders to hold management to account. Depends statute: **Boyd**: allow investors to make sensible decisions.
- Vulnerability: **D knows (actually/inferentially) that info were being relied upon** (that P trusts D) (**Caparo**) (**Henry, from statute**) (**Scott Group, Woodhouse J: auditors know**) [point of the statutory regime: **Boyd Knight**]. This is whether the RP would rely.
  - No opportunity for intermediate examination (**Scott Group, Woodhouse**) auditors + accounts
- **Information was FOR the P** (specifically/member of class) (**Caparo**) Arbitrary distinction- insiders/outside (Caparo). D argues: DOC to all shareholders for managerial purposes, but not individuals. **Scott Group** - no general public obligation, only to those “sufficiently concerned” eg. investors
- **Assumption of responsibility** (express/implicit): (**Hedley, Reid**). D didn't have to say anything, and could've given disclaimer. **Disclaimers remove liability**.
- D had (or held themselves out to have) **special skill/knowledge (**Hedley, Scott**)** + P knows. Used to have to be expert (**MLC**), now more chill. (Similar: causation in law but here more easily satisfied (**GP does specialist job ok, not causation**))
- **Professional/business capacity**, or where D takes resp (**Day**) architect, Local authorities often RR upon (**Henry**) auditors (**Scott, Woodhouse J**)
- **Payment/D gets something-** higher RR, similar to contract (**L Devlin, Hedley**) (LIM in Henry)

**Pure economic loss is issue (see end of duty)**

**Scott Group:** Woodhouse loves Ps: F all you need.  
**Caparo** not binding, but still persuasive to NZ Courts. **Boyd Knight** analysed duty in a similar way to **Caparo**

**CAPARO TEST:** adviser D, advisee P (**neither conclusive nor exclusive** - L Oliver)

1. The advice must be required for a purpose, which it is made known to the adviser at the time when the advice is given
2. the adviser knows that his advice will be communicated to the advisee, either specifically or as a member of an ascertainable class
3. It is known that the advice is likely to be acted upon by the advisee without independent inquiry
4. Advisee must act on the information to their detriment

**Building cases:** \$ + statutes + local authority owing care + **duty to inspect carefully analogies**

Policy - health and safety. REBUT: stat scheme necessary, Hamlin factors.

Contrast: building easy to inspect - other things difficult w/ no objective criteria: hard to know what breach would look like.



**Expansive building DOC:** Local authority owes home-owners duty to inspect foundations carefully (Anns)  
Builder's duty = build a reasonably sound structure, good materials and "workmanlike" practices. (Bowen)

Subsequent owner can recover: house quality NOT just contractual matter between builder + first owner (Bowen) (Hard for the subsequent owner to sue applying a standard of care that never existed.)  
(Anns) - \$ given to restore building to a condition NOT imminently endangering P's health + safety. Steiller expands: duty extends to reduction in value of house.

**In UK (Murphy)+ AUS, rejected Anns** - LA shouldn't be liable if builder can't + pure ec loss bad (contract - should've bargained).

**NZCA Hamlin, property damage recoverable.**  
Cooke P: "Homeowners rely on LAs to exercise RC"  
Richardson J: Murphy doesn't apply bc statute doesn't negative DOC (Building Act 1991) - Parl happy  
NZ housing market distinct (not just market, social policy):  
1. High proportion of owner occupied housing  
2. individual builders/small firms build for individual clients  
3. State very involved in the provision of finance  
4. Building activity surge  
5. Local government agencies control building heaps  
6. NZers buying low-cost houses typically don't contract own engineers/architects  
PC didn't engage with Murphy, said NZ economy different.

**MIXED rental (investment) + owner occupied North Shore City Council (Sunset Terraces): Hamlin upheld** (may be housing later + don't want shit in market).

**V commercial (owner occupied apartments + indiv owned hotel unit - common facilities North Shore City Council (Spencer on Byron): CA maj:** no DOC bc commercial (not apartment owners?), **SC:** DOC bc consistent w/ Building Act (upped obligations, no difference houses/other buildings), priced ent: Hamlin, distinction not practical (mixed residential?), public interest (shit in market) **Dissent William Young J: is guarantee on investments - removes requirement for due diligence).**

**Leisure centre (not residential) collapsed - issue: code compliance certificates.** Hamlin principles. Contributory negligence. **Southland Indoor Leisure Centre Charitable Trust**

**Pure economic loss (terms of houses + HB)**

**Houses:**  
**NZ: we reject the absolute distinction + say it is appropriate/consistent with gov leg to recognise this DOC. eg. Caparo**  
\$loss - paid more than you should have (paid for a good ginger beer) physical damage roof fell crushed art  
\$ loss = contract's area. **BUT: distinguishing makes people wait until physical damage is done**  
No real distinction between house's physical damage + economic loss (Dutton, Denning) foundation damage (Anns + Hamlin too)

**NM:** D argues: part of commercial deal agents shoulder liability, asked bankers to determine level of risk + transaction was more risky than anticipated: risk materialised (HB).  
In UK **HB "exception"** - only liability for pure ec loss where D "assumes responsibility" like contract, fiction, tort imposes.  
**L Devlin (HB)** says why should repairing car negligently differ from negligently approving a bad car for the road?  
**GREATEST PROBLEM** eg. **kiwifruit case-** floodgates: liability can extend (farm decimated, packing shed, workers, cafe)

**HENRY:**

Context: statutory obligation: **LGOIMA (Local Government Official Information and Meetings Act 1987)**, s44A (2)(a) - LIM.

**DUTY:** NM. Does a territorial authority owe a duty to potential purchasers to be careful in the preparation of a LIM? **YES.**  
Not novel-duty case: precedent **Marlborough District Council (SC)**  
Proximity: contractual-isa relationship (payment), rely on LIM for info about property (+ council KNOWS), professional adviser (skill).

**D could argue: LIM sought for many reasons, but statute doesn't require identification of purpose. Don't know if purposes align. + it no reasonable reliance (because information / advise), shouldn't be a duty.**

**BREACH:** Did the D act as a RP would've in the circumstances? NO - so **YES breach.**

*"potential for slippage that is the geological snail in the bottle of which the Council was required to give notice on the LIM" [96]*  
Standard: R council would have said there remained some residual possibility of slippage, despite stabilising works done.

**CAUSATION IN FACT: NO**

P must show they reasonably relied on the LIM.  
First step: actual reliance (would they have acted differently if council had fulfilled their duty).  
P allege: wouldn't've confirmed purchase unconditionally OR would've taken steps to mitigate losses. Ms Tan: would've walked away, gotten more information or looked to reduce the price. **BUT:** Cross examine detailed, reply "probably" wouldn't have bought it. Actual reliance is NOT made out when: **Ps don't read LIM or reliably knew LIM wrong.**

- P: S&P agreement conditional on satisfactory LIM (**D: yes, but normal: not getting LIM is negligent**)
- Ps didn't speak w solicitors about LIM (P: they were so comforted) (**D: so disinterested**)
- P: says they "relied on the council to provide us with all of the information known to it" (**Wrong: LIM's purpose is for information, rather than advice - it's a memorandum/summary. LIM is not a warrantee.**)

**Ellis J finding of fact:** Ps didn't rely on the LIM. P would not have acted differently even if Council had not breached duty. P's assertions "virtually meaningless" - Ellis J didn't believe.

**CAUSATION IN LAW: Scope of the duty. (NO)**

P say there is a duty on council **BECAUSE** purchasers are likely to rely. Therefore reliance is likely/F + reasonable.

**Statute relevant: LGOIMA s44A(2)(a)** only requires Council to **provide information**, NOT advise if property is safe (therefore reliance is not reasonable). **REBUT: LIM wording does seem to advise + how is P meant to know stat purpose.**  
Distinction from **SAAMCO** case.

**Duty to advise:** liability extends to all the F consequences of advice being followed.

**Duty to inform:** Ds can only be liable for consequences of info being wrong (not losses from things D wasn't directly resp for) [151]: Council only responsible for the economic loss between the value of the property implicitly endorsed, + the property with the special feature (potential for slippage).

## 2. Breach/std of care - facts, no precedent

Breach is concerned with working out exactly WHAT a RP in position of D would've done. (reasonable doctor)

### a) Find standard + compare w/ D's actions

- Breach required to limit liability - D must've acted unreasonably in circumstances (Blyth).
- NOT sufficient for D to "do their best" (Nettleship) learner driver must still drive to a standard of skill + care

**Breach factors** - The RP in pos of D accounts for...

#### 1. Likelihood of the harm

- (Bolton): very small likelihood (one ball every 3yr left property) (borderline: if were higher: yes liable)
- (WM(2)): Risk, while small, should have still been appreciated by the engineers.

#### 2. Severity of the potential consequences

- (Bolton): high damage as risk of death
- (WM (No 2)): risk of death again as fire could've killed workers on wharves

#### 3. Burden of preventing harm (often \$)

- (Bolton): Burden is not important at all if high risk: "If cricket cannot be played (safely)... then it should not be played ... at all". So doesn't even think that should be taken into account.
- (Watt): Denning: "balance the risk against the measures necessary to eliminate that risk"
- (Tomlinson): this factor is less important than social utility and "free will" factors.

#### 4. Social utility of the D's conduct (overall to society eg firefighters)

- (Bolton): Yeah a little bit of social utility for community + if it were illegal - D would've been liable.
- (WM (No 2)): no redeeming features: illegal, bad for environment - liable. Social utility more relevant than size of the risk - the risk was as small as Bolton but difference = neg social utility
- (Watt): Very important: fire fighters. Denning: "saving of life or limb justifies taking considerable risk", commercial setting no emergency = liability.
- (Tomlinson): Social value of keeping the beaches was relevant (digging it up is dumb) - effects on OTHERS.

#### 5. Victim's "free will"?

- (Tomlinson): When the P is the "author of [their] own misfortune", should not be able to sue - they choose to do that, and could impact socially good activities.

## TWO "exceptions":

1. **Goldman**: individual circumstances are relevant where D not author of risk. Storm reduced std - P only had to tell the neighbour (but didn't) Not expected: "excessive expenditure" or "physical effort of which he is not capable". Clashes Nettleship.

2. **Bolam**: specialist tasks (profession) must act in accordance with recognised body of professional opinion. But: ter Neuzen v Korn 1995 - common practice can be found to be negligent Montgomery patients hear both opinions + give informed consent.

**Driving cases**: learner driver expected to drive w/ experience + care of competent driver. (Imbree, overturns Cook, following Nettleship).

## CAUSATION IN FACT: BoP

- but for the D's breach of duty, the P wouldn't have suffered the loss (Barnett).  
antidote not there
  - Compare P's actual pos + hypothetical pos had the D fulfilled duty. (Henry). no reliance as doubted read LIM, didn't speak w/ lawyer didn't believe they would've acted differently
- Multiple potential causes**: Fairchild: 3 employers exposed P to asbestos, can't tell which caused injury. Recover from all - severable liability.

**Res Ipsa Loquitur**: "The thing speaks for itself". OLD: Scott - burden shifted onto D to disprove neg when thing causing harm in D's control, accident usually doesn't happen w/out negligence + no explanation for accident jet engine falls out plane. NEW: P maintains burden of proof but facts are very persuasive (Russell). Evidence Ambros shifted tactical burden (stats, temporal proximity, treatment would've been available).

**Causation + ACC**: (Ambros) - P still needs to establish treatment caused injury.

**Courts trump experts**: can reasonably infer causation using a "robust inference" on evidence where experts can't (Glazebrook J, Ambros) Justification: addressing social problem and science is V uncertain. BoP.

## CAUSATION IN LAW:

Damage must be w/in scope of the D's duty.

**Do we impose a duty on these Ds because of this risk? Do we expect D to have responsibility?** (broad/policy) water main workers risk water damage. REBUT: no connection : risk + activity. Henry: we impose duty on council BC purchasers likely to rely on LIM.

**Statute** relevant (Henry: statute required D to provide info, not advice as to if property safe)

**Duty to inform/advise** : NM

Henry distinction (from South Australia Asset Management Corporation, L Hoffman)

**To inform**: D only liable for R consequences of info being wrong valuer says \$10 thing \$100, P buys - \$90 loss.

Henry - Council only responsible for ec loss between value property endorsed + property w/ potential 4 slippage

**To advise**: Scope extends to all F consequences of P following advice, accounting for other circumstances. Market crash: (inform: no duty - advise: would R advisor have F)

Factors: Expertise/role of D, statute (Henry) Context/customs: normally interpretation

**Reasonable reliance in NM**: either causation or duty - analysis similar (Henry). If RR, likely within the scope of the duty.

## 3. Remoteness:

The **type** of damage must be RF from the breach of the duty (D's neg).

Wagon Mound (No 1) property damage by fire/water/squatters, Overturned: Re Polemis (D strictly liable for all direct results of neg) Hughs HOW damage happened need not be RF (as long as linked w/ neg) eg. fire damage re. leaving lamp + extent doesn't matter (as long as damage RF) expensive painting (Stephenson)

**Specificity**: If "property damage" were sufficiently specific P would've won in WM (No 1) as oil damage to slipways was RF.

Stephenson - exception - PI cases retain "egg shell skull" rule (bc life important). D still liable for full extent of damage if directly/neg injure P even if consequences not RF (due to underlying P condition)

Closely connected w/ causation: Grazebrook J Ambros: damage that isn't too removed from D's negligence is probably within the scope of their duty, as it is for this reason we impose a duty.

## 4. Damage:

must suffer actual harm/loss (PI, property, pure economic loss). Not about dignity.

**Pure economic loss**: buy something, not worth as much (normally contract) Scott Group: Cooke J - profit that isn't as large as you expected still a profit: NO DAMAGE (not contract). Mere upset not legally cognisable injury.